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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,551	03/17/2006	Ake Rosen	0104-0554PUS1	5075
2292 7590 07/10/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER SALMON, DEVIN RAE				
ART UNIT 3782		PAPER NUMBER		
NOTIFICATION DATE 07/10/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/572,551

Applicant(s)

ROSEN, AKE

Examiner

Devin Salmon

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Receipt is acknowledged of applicant's amendment filed on 2/2/2009. Claims 1, 2, 4, 5, and 7-10 are pending, claims 3 and 6 have been withdrawn from consideration, and claims 20 and 30 have been canceled. An action on the merits is as follows.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

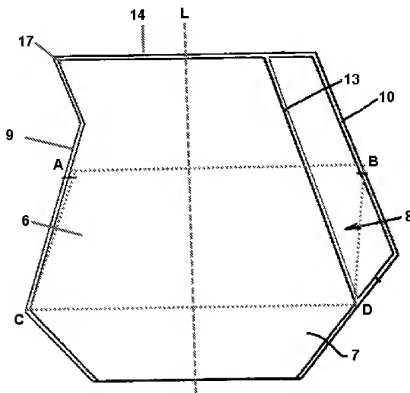
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. **Claims 1, 4-8 and 11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gautier (US 4,377,192) in view of Schwarzkopf (US 3,448,915).

5. To simplify understanding by the applicant, Figure 1 from the Gautier has been renumbered to match the applicants numbering of the container features (see image below).



6.

Regarding Claim 1, Gautier ('192) discloses a container comprising a bottom-forming wall and two opposite side walls, said walls being joined along boundary lines (9, 10, 13) to form an essentially flat container, the container blank having an upper portion (5), a bottom portion (7), a central portion (6) defined by the upper portion (5) and the bottom portion (7) and also by a front boundary line (9) and an intermediate boundary line (13), said portions (5, 6, 7) being arranged along the longitudinal axis (L) of the container, and a handle portion (8) defined by the intermediate boundary line (13) and a

rear boundary line (10), characterized in that the intersections (A, B, C, D) between the front boundary line (9) and respectively the rear boundary line (10) and the upper portion (5) and the bottom portion (7) constitute corners of a parallelogram comprising an angle of inclination relative to the longitudinal axis (L) of the container blank, in which parallelogram the front boundary line (9) forms an angle which is acute towards the bottom portion (7) and the front boundary line (9) and the intermediate boundary line (13) along the longitudinal axis (L) of the container give the central portion (6) an essentially symmetrical, frustoconical shape (Figure 1 edited below). Gautier ('192) fails to disclose that the front and intermediate boundary lines have a concave curvature relative to the central portion.

7. However, Schwarzkopf teaches a container wherein the boundary lines of the container portion have concave curvatures relative to the central portion (figure 7).

8. Making the front and intermediate boundary lines a concave curvature is an obvious change in shape absent any showing of criticality and unexpected result by applicant.

9. **Regarding Claim 4**, Gautier et al. ('192) discloses a container in which the handle portion comprises a handle-forming duct means intended for gas filling (column 1 lines 25-28).

10. **Regarding Claim 5**, Gautier et al. ('192) discloses a container in which the bottom portion (7) and the central portion (6) together define a volume corresponding to at least 80% of the volume intended for the container. It would be obvious to one of

ordinary skill in the art that the container of Gautier et al. has a volume corresponding to at least 80% of the volume intended for the container since the intended volume is left to the user such as the intended fill line could be the same as the line between A and B in Figure 1 above.

11. **Regarding Claim 6**, Gautier et al. ('192) discloses a container comprising a duct means (14) intended for filling, said duct means having an extent towards the interior of the container (Figure 1).

12. **Regarding Claim 7**, Gautier et al. ('192) discloses a container in which the duct means (14) intended for filling tapers towards the interior of the container (Figure 1).

13. **Regarding Claim 8**, Gautier et al. ('192) discloses a container comprising a spout-like duct means (17) (Figures 1).

14. **Regarding Claim 11**, Gautier et al. ('192) discloses a container produced by filling of a container blank having the features as claimed in any one of claims 1 or 4-8.

15. **Claims 3 and 11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gautier ('192) in view of Schwarzkopf and further in view of Gautier et al. (4,361,235).

16. **Regarding Claim 3**, Gautier ('192) in view of Schwarzkopf fails to disclose that the front and rear boundary lines have a complementary curvature.

17. However, Gautier et al. ('235) discloses container in which the front boundary line (3a) has a complementary curvature to the rear boundary line (3b) (Figure 1).

18. It would have been obvious to one of ordinary skill in the art to have the outer edges of the container be complementary since doing so would reduce the amount of waste produced during manufacturing.

19. **Regarding Claim 11**, Gautier et al. ('192) discloses a container produced by filling of a container blank having the features as claimed in claim 3.

20. **Claims 9, 10, and 11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gautier et al. in view of Schwarzkopf and further in view of Bochet (US 6,095,689).

21. **Regarding Claim 9**, Gautier et al. ('192) discloses container in which the spout-like duct means (17), but fails to disclose that the end portion of the spout has a tear initiation.

22. However, Bochet teaches a package made of a flexible film with a spout-like duct which is opened using a tear initiation line (Column 2, lines 10-20).

23. It would have been obvious to one of ordinary skill in the art to provide the package of Gautier et al. with the tear initiation line of Bochet since doing so would provide a way to open the package without needing scissors.

24. **Regarding Claim 10**, Gautier et al. ('192) discloses container with a spout-like duct means (17), but fails to disclose that the end portion is wholly or partially delimited from the rest of the spout-like duct means (17) by a zone weakened by thinning of

material the end portion being manually separable, by the weakened zone, from the rest of the spout-like duct means.

25. However, Bochet teaches a package made of a flexible film with a spout-like duct which is opened using a tear initiation line consisting of a thinning of the material (Column 2, lines 30-35).

26. It would have been obvious to one of ordinary skill in the art to provide the package of Gautier et al. with the tear initiation line made by thinning the material since doing so would provide a better defined opening as defined by Bochet (Column 1, lines 52-67).

27. **Regarding Claim 11**, Gautier et al. ('192) discloses a container produced by filling of a container blank having the features as claimed in claims 9 and 10.

Response to Arguments

28. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Doyen et al (US 3,935,993).

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devin Salmon whose telephone number is (571)270-7111. The examiner can normally be reached on Monday thru Thursday, 9:30 A.M. to 5:30 P.M. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GARY L. WELCH/
Supervisory Patent Examiner, Art Unit 3765